

1995

Theresa F. Thompson v. Community Nursing Service & Hospice : Brief of Appellant

Utah Court of Appeals

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COURT OF APPEALS

FILED

1995

Case No. 950102

IN THE SUPREME COURT OF THE STATE OF UTAH

THERESA F. THOMPSON,

Plaintiff/Appellant,

vs.

COMMUNITY NURSING SERVICE &
HOSPICE,

Defendant/Appellee.

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Case No. 950102

APPELLANT'S BRIEF

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Signature on page 44

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4. JURISDICTION: Court of Appeals has jurisdiction in this matter pursuant to Section 78-2a-3(d). This case should be addressed by the Supreme Court because: 1) it deals with improprieties on the part of the Defendant's lawyers; 2) it deals with bias on the part of the Trial Court judge; 3) it deals with issues of first impression in the state and each issue is of substantial importance in the administration of justice in Utah. Re: Utah R. App. P. Rule 9 (c7B);
5. ISSUE FOR REVIEW AND STANDARD OF REVIEW: Plaintiff (Theresa F. Thompson) requests that the whole case be reviewed with careful attention to: 1) whether or not Defendant's lawyers informed Defendant that false testimony to the EEOC would be protected by absolute privilege. (The Defendant knew about absolute privilege and used it in planning its response to the EEOC and violated all laws against false testimony both State and Federal. The ease with which the testimony can be proven false and the fact that it was admitted at the hearing indicates a prior knowledge of protection through absolute privilege. (Standard of Review--Section 78-51-31--Deceit and Collusion); 2) whether or not Defendant's defensive arguments apply to the Plaintiff's charges or to charges created by Defendant with statements of fact: "What Plaintiff is really attempting to do is..." (Standard of Review--Professional Conduct Rule 3.3 (a 1, 4) and Section 78-51-26(4)--Duties of Attorneys and Counselors...to employ for the purposes of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law; 3) whether or not the Equal Employment Opportunity Commission can be determined to be quasi-judicial according to the Utah Code. (Standard of Review--Comparison

of regulations governing EEOC officials and procedures with Utah Codes governing judges, lawyers, procedures and quasi-judicial officials (court commissioners); 4) whether or not absolute privilege can be claimed if the statements made in a potentially quasi-judicial proceeding have nothing to do with duty and in no way promote public welfare (both requirements by definition), (Standard of Review--Black's Law Dictionary); 5) whether common law (absolute privilege) in violation of statutory law (laws against false testimony) takes precedence over statutory law or whether statutory law takes precedence over common law. (Standard of Review--Utah R. App. P. Rule 9(c7B)).

Issues 1 and 2 above are intrinsic to the manner in which the trial court case was conducted and to the information presented to the EEOC in the course of an official proceeding. The misconduct and criminal behavior of Mr. O'Brien will be proven in the argument section of this brief. The intrinsic nature of this issues is preserved in the trial court records. Issues 3, 4 and 5 are matters of law that need to be determined for fair administration of law and are matters that need to be determined by the Supreme Court. These matters are basic to the determination of the trial court case.

6. CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS
WHOSE INTERPRETATION IS DETERMINATIVE OF THIS APPEAL:

Constitution of Utah, Article 1, DECLARATION OF RIGHTS, Sec. 15. Freedom
of speech and of the press--Libel:

No law shall be passed to abridge or restrain the freedom of speech
or of the press. In all criminal prosecutions for libel the truth
may be given in evidence to the jury; and if it shall appear to the
jury that the matter charged as libelous is true, and was published
with good motives, and for justifiable ends, the party shall be
acquitted; and the jury shall have the right to determine the law
and the fact.

UTAH CRIMINAL CODE:

Section 76-8-502: A person is guilty of a felony of the second
degree if in any official proceeding; 1) He makes a false material
statement under oath or affirmation or swears or affirms the truth
of a material statement previously made and he does not believe the
statement to be true; or 2) He makes inconsistent material statements
under oath or affirmation, both within the period of limitations,
one of which is false and not believed by him to be true. In a
prosecution under this section, it need not be alleged or proved
which of the statements is false but only that one or the other was
false and not believed by the defendant to be true. (False or in-
consistent material statements)

76-8-503. False or inconsistent statements. A person is guilty of
a class B misdemeanor if: 1) He makes a false statement under oath
or affirmation or swears or affirms the truth of the statement pre-
viously made and he does not believe the statement to be true if:

(a) The falsification occurs in an official proceeding, or is made with a purpose to mislead a public servant in performing his official functions; or (b) The statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or (2) He makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this section, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true. (3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

76-8-504. Written false statement. A person is guilty of a class B misdemeanor if: (1) He makes a written false statement...(not applicable to this case) : or (2) with intent to deceive a public servant in the performance of his official function, he: (a) Makes any written false statement which he does not believe to be true:

JUDICIAL CODE:

78-51-31. Deceit and collusion. An attorney and counselor who is guilty of deceit or collusion, or who consents thereto, with intent to deceive a court or judge or a party to an action or proceeding is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action.

78-3-31. Court commissioners--Qualifications--appointment--

Functions governed by rule. (1) (a) Court commissioners are quasi-judicial officers of courts of record and have judicial authority as provided by this section and rules of the Judicial Council.

(b) (must be lawyers but may not practice law during tenure as

Court commissioners--Section 78-7-2); (2) (a) (appointed by Judicial Council with concurrence of majority of judges of trial courts in the district commissioner will primarily serve.); (3) (qualifications); (4) (oath of office); (5) Court commissioners shall: (a) comply with applicable constitutional and statutory provisions, court rules and procedures, and rules of the Judicial Council; (b) comply with the Code of Judicial Conduct to the same extent as full-time judges; and (c) successfully complete orientation and education programs as required by the Judicial Council.

(6) (what functions commissioner may and may not perform);

(7) The presiding judge of the district the commissioner primarily serves: (a) shall develop a performance plan for the court commissioner and annually conduct an evaluation of the commissioner's performance, and shall provide the plan and evaluations to the judicial Council upon request; and (b) is responsible for the day-to-day supervision of the court commissioner.

UTAH RULES OF CIVIL PROCEDURE:

Rule 1. General provisions . (a) Scope of rules.....They shall be liberally construed to secure the just, speedy and inexpensive determination of every action.

Part III PLEADINGS, MOTIONS, AND ORDERS. (summary of the presentation of a case to a court--complaint, answer, motions with memorandum in support of motion, and counter-motions with memorandum in support of such motions, possible hearings and requests for decisions.)

(Every action is an attempt to get to the truth of the matter and every party has the right to address every issue that is brought up)

CODE OF JUDICIAL CONDUCT:

CANON I. A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE

OF THE JUDICIARY. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

CANONS 2-5 (summary--judges shall avoid impropriety and the appearance of impropriety in all activities, shall perform the duties of the office impartially and diligently and shall do nothing that might make anyone lose faith in the judicial system, shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations, and shall refrain from political activity inappropriate to the judicial office.)

RULES OF PROFESSIONAL CONDUCT:

Scope. The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. (summary of rules--the rules control client-lawyer relationships, the role of counselor, advocate with many shall nots such as shall not deliberately mislead a tribunal, transactions with persons other than clients, public service, etc. It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;)

42 U.S.C.A. section 2000e-9 (Re: Equal Employment Opportunity Commission)

1. Purpose: In amending this subchapter to give Commission authority to conduct investigations of charges of employment discrimination and to enforce orders where it was determined

that discrimination existed, Congress intended to simplify investigations, rather than complicate them with protracted pleadings and motions, in order to remove burdens that had been placed upon both courts and parties. EEOC V. Suburban Transit System, Inc. N. D. Ill 1982, 538 F. Supp. 530.

Definition of absolute privilege from Black's Law Dictionary:

An exemption from liability for the speaking (libelous statements) in the performance of a duty...(absolute) privilege...protects the speaker or publisher without reference to his motives or the truth or falsity of statement. This may be claimed in respect to statements made in legislative debates, in reports of military officers to their superiors in the line of duty and statements made by judges, witnesses, and jurors in trials in court...based on the fact that the statement was made in the performance of a political, judicial, social or personal duty...privileges created by law irrespective of consent...arise where there is some important overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm,

7. A STATEMENT OF THE CASE:

Plaintiff received 2 years of harrassment by Community Nursing Service, was fired, and filed a complaint with the EEOC because of harrassment and retaliation. The Defendant presented false testimony to the EEOC in violation of the law, and the Plaintiff having no way to anticipate this action on the part of her former employers was thrown into severe stress that sent Plaintiff to Logan Regional hospital with intractible abdoemenal pain and migraine headache for 9 days followed by 3 week recovery period. I filed a civil suit for severe physical and emotional stress for false testimony. The false testimony is described in paragraphs 9, 10 and 11 of Complaint, but I labeled it as defamation for brevity's sake when I referred to it elsewhere believing that when you presented false testimony against some one you are defaming them. (page 3)

CNS/H's defense was that absolute privilege prevented any charges from being brought against them. (page 136)

Judge J. Dennis Frederick agreed.

Mr. O'Brien (CNS/H's lawyer) continuously tried to deceive and mislead the judge through lies (telling the judge the essential issue filed with the EEOC was termination (page 42) when the essential issue filed with EEOC was clearly a two-year history of harrassment (pages 67-73)) and half truths (page 38)/ O c;ear;u cjarged tjtat O was severely harmed mentally and physically by half truths and outright lies (page 3). I want the case reviewed for misconduct on the part of Mr. O'Brien leading to defenses that did not apply to some of my charges.

Judge Fredericks conduct during the hearing was a violation of Rules of Judicial Conduct (pages 187-189). He made a decision on an untimely motion by Defendant, signed an order before Plaintiff knew about the motion, rescinded the order upon objection from Plaintiff, then reaffirmed it without further

information from Defendant. (page 134--untimely motion, page 141--hasty decision, page 148-9--order signed by judge with signature erased, page 150--order setting aside hasty decision--please note #1--the reason it was set aside, page 154--reaffirmed the hasty decision with no new information from defendant.) Plaintiff contends that this indicates bias on part of judge.

Plaintiff further contends that the criterion upon which the EEOC is determined to be a quasi-judicial body is arbitrary and that there are no regulations in place controlling the use of its powers to insure or attempt to insure a just and fair decision by the EEOC. The result is a statement that truthful or false testimony is protected by absolute privilege (page 39) When a decision is based on false testimony, the decision has to be unjust. It is for this court to decide whether or not justice is served by granting the status of quasi-judicial to the EEOC. We are not discussing whether or not my feelings and reputation were hurt by the Defendant saying bad but truthful things about me, but whether justice was served by the EEOC investigation and decision based on false testimony being given to the EEOC by Defendant in violation of the law. Was the severe physical and emotional harm caused by testimony that should never have appeared in the investigation (which I charged) defamation or an attempt to create a defamation liability or properly a Tort of Outrage based on false testimony? Finally this Court needs to decide if absolute privilege creates a right to present false testimony before an official proceeding to manipulate the decision of that proceeding..

8. Summary of arguments

1. The EEOC should not be considered a quasi-judicial proceeding or body based on the current criterion because the current criterion is arbitrary and has no criterion that insures or attempts to insure a fair and just determination. In the current status of the EEOC, absolute privilege creates a right to present false testimony to manipulate an official decision and mislead the investigators. At least the judge at the trial court level decided this was so. A better criterion would be a comparison of judicial procedures and regulations with similar characteristics of an EEOC investigation. This is so because judicial procedures and regulations attempt to insure a fair opportunity to all participants to address all issues in order that a fair and equitable decision can be made by the judiciary.
2. Absolute privilege cannot protect false testimony from defamation, criminal or tort of outrage charges. According to the Utah State Constitution, Article I, Section 15. Statements that are libelous must also be truthful, published with good motives and for justifiable ends in order for the person guilty to be acquitted. Even though Judge Frederick found in Defendant's favor, Mr. O'Brien never proved that absolute privilege protected false testimony as will be shown in the arguments.
3. Plaintiff contends that Mr. O'Brien is guilty of deceit and collusion and misconduct throughout these proceedings. The ease with which the testimony can be proven false and contradictory indicates a prior knowledge or belief in immunity from prosecution. Plaintiff contends that the knowledge came from Mr. O'Brien. Also Mr. O'Brien has consistently and continually attempted to deceive and mislead the trial court as to what the charges were, rules, procedures, definitions and has applied defenses that do not apply to charges as will be shown in the body of the argument.
4. Judge Frederick was biased against the Plaintiff as evidenced by his

behavior and attitude towards Plaintiff at the hearing (pages 187-190)
and his handling of some post-judgment motions and papers
described in the body of the argument. (pages 134, 141, 143, 148, 149, 150,
154),

ARGUMENTS

!. Argument against Equal Employment Opportunity Commission being granted quasi-judicial status and absolute privilege of statements made in its investigations.

In Thomas v. Petrulis (465 N.E. 2d 1059 Ill. App. 2 Dist. 1984) Six powers are listed as differentiating a quasi-judicial body from that performing merely an administrative function (page 51):

1) the power to exercise judgment and discretion; 2) the power to hear and determine determine or to ascertain facts and decide; 3) the power to make binding orders and judgments; 4) the power to affect the personal or property rights of private persons; 5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of the issues on a hearing' and 6) the power to enforce decisions or impose penalties.

Plaintiff would like to point out that among these six powers is not one characteristic, element or power that does anything to insure or attempt to insure a fair and just determination. There is nothing here to guarantee that the investigator does try to use discretion, or ascertain fact from falsity, or that a witness will be examined rather than the passive recording of testimony without challenge to its veracity or allowing its veracity to be challenged.

These powers without regulations to insure a fair and equitable decision leads to statements like: "Thus assuming arguendo (for the purpose of this motion only) that the factual basis of her claim is true, (1. severe physical and emotional harm caused by false testimony, 2. defamation of character--added by Plaintiff) Plaintiff plainly seeks to impose defamation liability for statements that are absolutely privileged because they were allegedly made during the course of a judicial or quasi-judicial proceeding."

(page 39) and "Of course an absolute privilege means there is no cause of action regardless of whether the statement at issue is true or false."

(Page 42)

But the Utah State Constitution Article I, section 15 says it ~~does~~ make a difference. Article 15 says: No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted: and the jury shall have the right to determine the law and the fact.

None of these were met by CNS/H's statements to the EEOC. They presented false testimony, without good faith and for the purpose of manipulating an official commission in the performance of duty. (The proof will be given under the argument for misconduct of the lawyer.)

The intrinsic falseness and self-contradictory nature of the testimony is a violation of criminal Code sections 76-8-502, 76-8-503, and 76-8-504.

Inspite of these violations of the State Constitution and statutory laws, Judge Frederick decided in Defendant's favor, " for reasons specified in supporting memorandum." (page 98)

In conclusion, from the foregoing statements, the basis upon which the EEOC has been determined to be quasi-judicial is arbitrary and abrogates any possibility of a fair and just decision.

An equally valid but more equitable criterion in that it would insure or at least attempt to insure a fair and just decision would be to compare the regulations that control the powers of both the judiciary and the EEOC.

In the Utah Rules of Civil Procedure, Rule 1 it says: Scope of rules... They shall be liberally construed to secure the just, speedy and inexpensive

determination of every action. A statement comparable to this statement of purpose is found in 42 U.S.C.S. section 2000e-9 (Re: Equal Employment Opportunity Commission) 1) Purpose: In amending this subchapter to give Commission authority to conduct investigations of charges of employment discrimination and to enforce orders where it was determined that discrimination existed, Congress intended to simplify investigations, rather than complicate them with protracted pleadings and motions, in order to remove burdens that had been placed upon both courts and parties. EEOC v. Suburban Transit System, Inc. N.D. Ill. 1982, 538 F. Supp, 530.

So what was the consequence of removing the "protracted pleadings and motions?

According to Utah Rules of Civil Procedure, Part III Pleadings, Motions and Orders. (summary of the presentation of a case to a court--complaint, answers, motions with memorandum in support of motions, counter-motions with memorandum supporting them, hearings and requests for decisions--Every action is an attempt to get to the truth of the matter and every party has the right to address every issue that is brought up.)

Eliminating the pleadings and motions means that all issues will probably not be addressed by everyone which is what happened to Plaintiff. I was not allowed to know what information was presented by CNS/H to the EEOC except in the most general way. That information in the most general way let me know that CNS/H had lied about me. I asked what I could do to prove the information was false. The investigator said if I thought the information was false, I'd have to challenge it in Civil Court, and the investigator proceeded to make a decision against me based on false testimony.

The decision of the judge in the trial court has been previously discussed.

In addition to the Rules of Civil Procedure, there are the Judicial Code, the Code of Judicial Conduct and Rules of Professional Conduct. The Code of Judicial Conduct states that "A judge shall uphold the integrity and independence of the judiciary." And there are several Canons that list what

a judge shall and shall not do to uphold the integrity and independence of the judiciary. Under the Judicial Code 78-3-31 are listed the qualifications, appointment and functions of Court Commissioners, quasi-judicial officials of the Court. Under 78-3-31 (5a-b) Court Commissions shall: comply with applicable constitutional and statutory provisions, court rules and procedures, and rules of the Judicial Council: comply with the Code of Judicial Conduct to the same extent as full-time judges.

Finally there are the Rules of Professional Conduct which set bounds on the behavior of lawyers such as Rule 3.3--(a lawyer) shall not deliberately mislead a tribunal. All of these Codes and regulations are aimed at fair and equitable decisions by the Court. There are no such regulations in the EEOC which is why decisions like I received are made. To compound the problem, The EEOC has been improperly classified as quasi-judicial with absolute privilege. When false testimony is classified as defamation and protected by absolute privilege, there is no possibility of a fair and just decision.

There are three possible solutions based on the information presented, 1) determine that the EEOC is not quasi-judicial nor is the testimony privileged by anything but the State Constitution; 2) that the EEOC is quasi-judicial but that testimony only has partial privilege; 3) that the EEOC is quasi-judicial, has absolute privilege, but that false testimony, a violation of both the State Constitution and statutory law is not, can not and was never intended to be protected by absolute privilege.

Plaintiff wants any decision that makes Defendant responsible for their false testimony (a violation of the law) and the severe consequences to the Plaintiff. This charge was not at any time an attempt to create a defamation liability regardless of whatever mistakes I made in attempting to label facts.

The relief Plaintiff asks for the extreme harm caused to her by Defendant's

violation of law is \$12,000,000 (twelve million dollars).

2. Argument why statutory law (false testimony) should take precedence over common law (absolute privilege).

Re: State Constitution Article I, Section 15 ...and it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted...

Re: Utah Criminal Codes: Section 76-8-502--A person is guilty of a felony of the second degree if in any official proceeding: 1) he makes a false material statement...2) he makes inconsistent material statements...

Re: Section 76-8-503 A person is guilty of a class B misdemeanor if: 1) he makes a false statement...2) he makes inconsistent statements...

Re: Section 76-8-504 A person is guilty of a class B misdemeanor if: 1) he makes a written false statement...: or 2) with intent to deceive a public servant in the performance of his official function.

Re: Definition of absolute privilege from Black's Law Dictionary:
Libel and slander: An exemption from liability for the speaking (of libelous statements) in the performance of a duty...(absolute) privilege...protects the speaker or publisher without reference to his motives or the truth or falsity of statement. This may be claimed in respect to statements made in legislative debates, in reports of military officers to their superiors in the line of duty and statements made by judges, witnesses, and jurors in trials in court... based on the fact that the statement was made in the performance of

a political, judicial, social or personal duty...privileges created by law irrespective of consent...arise where there is some important overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm.

Obviously, from a comparison of the Utah Constitution Article I Section 15, the statutory laws against false testimony and absolute privilege, there is a direct conflict. Absolute privilege abrogates the Constitutional and statutory provisions that assure justice in an official proceeding.

Absolute privilege is based upon the public interest in according to all men the utmost freedom of access to the Courts of justice for the settlement of their private disputes." Restatement (Second) of Torts, section 587-588 (1977) (hereafter cited as Restatement) The privilege broadly applies to any sort of judicial or administrative proceeding, in any branches of government, where a type of judicial function is performed." Id. at sec 585. (page 40)

The purpose is to accord access to the courts of justice with their rules and regulations to insure justice. The problems with the broad application of absolute privilege is the elimination of justice as described under argument about the EEOC.

However, is absolute privilege suppose to protect one from the consequences of violating the law. Plaintiff thinks not.

Restatement section 588 states: A witness is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding or as part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding. (page 40)

According to the State Constitution, these statements must be true, published with good motives, and for justifiable ends. Also this testimony will be given under oath where the witness swears to tell the truth. It is

assumed that the testimony although libelous is truthful, not false testimony.

Utah Code Ann. section 45-2-3(2) states: A privileged publication or broadcast which shall not be considered as libelous or slanderous per se, is one made: (2) In any publication or broadcast of or any statement made in any legislative or judicial proceeding, or in any other official proceeding authorized by law. (page 40)

This simply says that what is said in any legislative, judicial or other official proceeding authorized by law may be broadcast verbatim. This does not say one can lie about what was said.

In Allen v. Ortiz 802 P. 2d 1307 (Utah 1990) (hereafter referred to as Allen) the Utah Supreme Court relied on both the Restatement Prosser discussed above and stated: One of the absolute privileges (from defamation) is that granted to participants in judicial proceedings. The general rule is that judges, jurors, witnesses, litigants and counsel in judicial proceedings have an absolute privilege against defamation. This privilege is premised on the assumption that the integrity of the judicial system requires that there be free and open expression by all participants and that this will only occur if they are not inhibited by the risk of subsequent defamation suits. (citations omitted) (page 41)

It is to be assumed that since the Supreme Court of Utah is sworn to uphold the State Constitution that this decision must be interpreted in the light of the Constitution and that the libelous statements must be truthful, 'published' with good motives and for justifiable ends. (Plaintiff asks the Court to clarify this matter in this decision. Defendant's lawyer cited this decision as support that CNS's false testimony had absolute privilege.)

Again from the Allen case the Utah Supreme Court outlined 3 elements necessary to any successful claim of absolute privilege. (page 42)

These three elements must also be interpreted in the light of the State Constitution and statutory laws for the reasons given above. Again these elements refer to statements that are truthful, 'published' with good motive and for justifiable ends. CNS/H's testimony did not fit Constitutional requirements for privilege. Also there is the added safeguard of all of the rules and regulations of the judicial system for which the elements were described for.

In none of the proceeding examples did Mr. O'Brien apply absolute privilege to quasi-judicial proceedings, Each example cited was a judicial proceeding regulated by specific codes and the State Constitution meant to insure a fair and settlement, and in each situation the testimony is given under oath and expected and required by law to be truthful, not false testimony.

One quasi-judicial proceeding Mr. O'Brien cited was Thomas v. Petrulis (465 N.E. 2d 1059 Ill App. 2 Dist. 1984) to support his contention that all testimony before the EEOC is protected by absolute privilege. In this particular case Petrulis' charges with the EEOC are protected by absolute privilege because properly filed charges with the EEOC are protected by statutory law. (page 48)

What I want to show here is the gross miscarriage of justice when absolute privilege protects false testimony from defamation liability, and what happens to the very purpose for which absolute privilege exists. For the purpose of argument, we will assume that Petrulis' charges with the EEOC were false and malicious and that Thomas was innocent of any harm. Perhaps he rebuffed her advances and she wanted to get even. The quasi-judicial system is the perfect way to do it. Anyone can destroy anyone else in an EEOC investigation. Anything goes and the biggest liar wins. He lost his job and Petrulis gets her revenge with the blessings of the law. Is there any reason to take one's disputes to the EEOC? No, since there is no possibility of justice.

This situation is intolerable. The problem is that the purpose of absolute privilege is based upon "the public interest in according to all men the utmost freedom of access to the Courts of justice for the settlement of their private disputes." Note...COURTS OF JUSTICE...not quasi-judicial proceedings. Courts of justice are bound on every side by before mentioned rules and regulations that every attempt is made to obtain truthful testimony. As mentioned before the problem with Thomas v. Petrulis is the problem with the EEOC; is any justice that may be achieved lies with the integrity of the litigants and witness, rather than with the EEOC. In my case the Defendant's had no integrity.

Inspite of Judge Frederick's decision that false testimony before the EEOC is protected by absolute privilege, Plaintiff contends that such a decision is not supported by the law itself or by Mr. O'Brien's arguments.

Plaintiff respectfully asks this court to clarify the Allen decisions in light of the State Constitution and statutory laws, and to make a possitive decision stating that the State Constitution and statutory law make specific requirements for libelous statements to be privileged. By the State Constitution and statutory laws, they must be truthful, published with good motives and for justifiable ends. To do otherwise is to create gross injustice and remove the reason to bring one's private disputes into quasi-judicial proceedings--justice.

Since, according to the State Constitution, libelous statements must be true, published with good motive and for justifiable ends, and that CNS/H's were false and said and written to manipulate an official investigation in violation of law, Plaintiff asks that the defamation of character be considered a triable issue and find in Plaintiff's favor for \$2,000,000 (two million dollars).

3. Argument for Mr. O'Brien's (Defendant's lawyer) misconduct and liability of Mr. O'Brien and his employers, JONES, WALDO, HOLBROOK AND McDonough Law Firm

CNS/H presented false testimony to the EEOC in order to manipulate a decision in their favor. The ease with which the testimony can be proven false and the fact that they made no effort to remove inconsistencies indicates knowledge or a belief that they were immune to prosecution for their statements. Plaintiff contends that that sort of knowledge could only come from their lawyer. In advising CNS/H that they could violate Utah Codes Ann. Sec. 76-8-502, 76-8-503, 76-8-504 without fear of prosecution, Mr. O'Brien violated Utah Code Ann. Sec 78-51-31 (Deceit and Collusion--An attorney and Counselor who is guilty of deceit and collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action,"), Plaintiff holds Mr. O'Brien and his employers liable for Mr. O'Brien's conduct.

Mr. O'Brien also violated several Codes of Professional Conduct as will be shown.

The following is the account of the false testimony:

Inconsistent Statement (76-8-503) See attached sheet--Lona Booth's testimony- She states:..."she had received many complaints about CP from patients and other staff, and had counseled CP on these complaints. Except for the complaints, CP did a good job." There were no counseling sessions between Lona Booth and Plaintiff which is why no such records were sent to the EEOC from Ms. Booth. The statement: "Except for the complaints, CP did a good job." is an inconsistent statement. A good worker does not get 'many complaints', and one who gets many complaints is not a good worker. Please compare with the attached complaints, none are from Ms. Booth, they are all from Susan Morgan. (Susan

Morgan was Plaintiff's problem at CNS/H. Please see pages 72-73)

False or inconsistent material statements Section 76-8-502 (See attached sheet--testimony from Colleen Hollenbeck) Lines 7, 8 and nine say: "CP struggled with her job duties from the very start of her employment. Her main problem was the ability to get along with patients." Please refer to Page 4 of 'Response to Charge and Request for Information' paragraph 1. It reads: On or about December, 1991, (actually it was in May 1992) Ms. Thompson submitted an internal application requesting she be considered for weekend duty (actually Plaintiff was hired for weekends and worked every weekend) and was accepted. The position was regarded as full-time and was fully benefited. (I earned about \$14 per visit up to 7 visits in a day and \$21 for each visit over 7 in a day. During 1992 I earned \$30,000. A lot of visits for someone who had problems with clients. I tried to get my records from CNS/H but couldn't get them.) Skills required of this position included proficiency in IV teaching and administration, excellence in assessment skills, and organizational skills to adequately coordinate delivery of care on the weekends...This was the shift she was working at the time of her termination in March, 1993" Ms. Colleen Hollenbeck, Director of Nursing in 1991 and 1992, created the weekend position and offered it to me. Ms. Hollenbeck's statement is false and discredited by fact that she gave me a position that required excellent nursing and people skills.

Inconsistent Statement (76-8-504) Refer to Page 4 of Response to Charge and Request for Information: Paragraph 1 says I was given a job on or around December, 1991 (less than a year after I was hired, the position was actually only in the thinking stage at that time) that required proficiency in...(listed above) and I still had that same position at the time of my termination. Paragraph 5 says Plaintiff had a history of staff and patient complaints for which Plaintiff counseled. (These complaints are enclosed) 5/3/91--patient complaint (before

Plaintiff was assigned the newly formed weekend position, apparently Plaintiff's patient skills had improved by the end of 1991.) 1/29/92 Patient complained of a stressful visit--patient upset because Plaintiff showed at beginning of yearly championship football game, (see attached sheet 1/30/92). 4/11/91 (see letter in charge file attached to Objection to Defendant's Motion--pages 72-73) Plaintiff was hired on 1/2/92, was not oriented until end of January, got so few visits over next few months had to take a second job. It is to be assumed Plaintiff would need to increase knowledge of home health necessary in personal practice. Obviously, from paragraph 1, Plaintiff acquired that knowledge. 8/20/92 indicated she needed to "increase assessment skills and admit paperwork:. The evaluation that this was on was not sent to the EEOC. Plaintiff still held weekend position and had excellent skills. Paragraph 6 says "One of her supervisors, Susan Morgan, has record of verbal counseling for patient complaints, interactions with peers and personal appearance issues on 5/3/91, 10/23/91, 12/1/91, 1/1/92, 1/30/92 and 4/18/92. Please read Plaintiff's charges to the EEOC against CNS/H and see where Susan Morgan fits into it. (pages 72-73) Susan Morgan withheld the order mentioned in the Memorandum in Support of Motion to Reverse Judgment. 5/3/91 has already been discussed. 10/23/91 says one nurse thought I had done something wrong, Susan said I had done what I was supposed to do. Document enclosed. 12/1/91 says Teri Thompson saw a patient...charting--assessment much better. Document enclosed. 1/1/92 says a medication error had been made because of orders Plaintiff received from another nurse. Document enclosed. 1/30/92 has been discussed. Document enclosed. 4/18/92 speaks again of a stressful visit. Susan thought that the patient's caregiver was stressed. Of the documents sent in support of Paragraph 6, 2 dealt with patient complaints, (both before I was given the weekend position), 2 complaints in two years do not make many complaints, none address personal appearance of Plaintiff except one written by Susan Morgan

but unsigned, its enclosed. One was a complement, one explained a situation to Plaintiff's benefit and one had to do with a medication error. The inconsistency between Paragraph 6 and the documents are a violation of law.

I contend that the ease with which this testimony is proven false indicates a prior knowledge of immunity to prosecution and that that knowledge could only come from the Defendant's lawyer.

Mr. O'Brien (Defendant's lawyer) has continuously attempted to subvert and change Plaintiff/Appellant's charges and mislead and deceive the judge as to the issues. Plaintiff's Complaint for Severe Financial Loss and Severe Emotional and Physical Stress for: Defamation of Personal and Professional Character. Paragraphs 9 and 10 of this document read: "9. On or around the 15th of August, 1994, Sharon Hencky, investigator for the EEOC contacted Plaintiff to respond to Defendant's charges of: 1) treating client in an uncaring, dangerous manner; 2) filthy, unkempt appearance; 3) insubordination; 4) substandard performance; 5) poor interpersonal relationships. 10. Since Plaintiff had not heard these charges or the half truths or outright lies that had been used to support these charges before, Plaintiff was thrown into severe emotional stress that contributed to an acute episode of diverticulitis that landed Plaintiff in Logan Hospital for nine days.

Wherefore, Plaintiff prays judgment against Defendants for defamation of personal and professional character leading to: 1) loss of employment; 2) loss of professional reputation; 3) loss of personal reputation; 4) severe physical and emotional stress; the sum of \$3,000,000 (three million dollars). (page 3)

It is to be assumed that Mr. O'Brien is familiar with the State Constitution and knows that libelous testimony needs to be truthful, published for good motives and a justifiable end since he is a lawyer. He deliberately led Judge Frederick believe that false testimony is protected by privilege. (page 39,193)

Memorandum

TO: File
FROM: SH
RE: T. Thompson vs Community Nursing Services
Charge No. 35C-94-0115

1. On August 19, 1994, during a telephone interview, Colleen
2. Hollenbeck (DOB 4-13-59), former Nurse Manager and CP's witness,
3. stated the following:

4. She had hired CP. She stated that the reason CP was hired was her
5. life's experience, in lieu of the fact she had little nursing
6. experience. Ms. Hollenbeck thought that with experience and in-
7. house training, CP would do just fine. CP struggled with her job
8. duties from the very start of her employment. Her main problem was
9. the ability to get along with patients. CP's job was to go to
10. patient's homes and provide whatever care was necessary. Many
11. complaints were received about CP's attitude and way of handling
12. these patients. She was counseled on several occasions. After
13. CP's first counseling session with Susan Morgan, CP stated that
14. Susan pointed out wrong things. CP persistently argued about the
15. content of what Susan was trying to relate to CP. When Ms.
16. Hollenbeck restated what Morgan had initially said, CP seemed to
17. understand what had gone on and why she had been counseled. CP
18. never used the word "harassed" when speaking about her treatment by
19. Morgan, it was mostly about performance issues. Ms. Hollenbeck
20. stated that Morgan was responsible for the highest risk patients
21. (IV), and errors could be life-threatening. Morgan had to address
22. deficiencies to employees. Most employees, including CP, did not
23. like to hear what Morgan said. Ms. Hollenbeck stated that she had
24. never personally observed anyone, including Morgan, harassing CP or
25. anyone else. Ms. Hollenbeck only had second hand knowledge about
26. the incidents leading up to CP's termination, but did state that
27. they could have been very serious.

Memorandum

TO: File
FROM: SH
RE: T. Thompson vs Community Nursing Services
Charge No. 35C-94-0115

On August 19, 1994, during a telephone interview, Lona Booth (DOB 5-30-39), Weekend Supervisor and CP's witness, stated the following:

She said CP was a paradox - she had the appearance of a bag lady and was fairly intellectual on the other hand. From the very start, she had received many complaints about CP from patients and other staff, and had counseled CP on these complaints. Except for the complaints, CP did a good job, although she was one of R's lesser qualified nurses. CP had had minimum prior working experience and only had an associate degree in nursing, while most other nurses had bachelors degrees in nursing and many years of experience. CP transferred to her weekend team in December 1991, after CP had complained to her about her then supervisor, Susan Morgan. CP's complaint had stemmed from a warning she had received for poor job performance. CP did not use the work "harassment", but did say that Ms. Morgan did not treat her fairly. After talking to CP, Ms. Booth said that CP's main complaints were about Ms. Morgan's style of supervision. Morgan was responsible for the most critical ill patients and had to see that employees were performing their duties, such as IV's, properly. She is an assertive person who will confront any situation head-on, and expects a great deal from her workers. She treats all employees the same way, fair or not. At the end of their conversation, Ms. Booth said that CP seemed to understand why she had received the warning, but said that she did not like hearing it from Ms. Morgan. Ms. Booth stated that no one else had complained about harassment from anyone in the ten years she had been employed by the Respondent, although she had heard employees grumble on occasion about Susan Morgan being too strict and expected too much of employees.

Regarding the last two incidents, Ms. Booth stated that they were both potentially very dangerous situations which could have been avoided. Regarding the second event, she stated that CP had gone to a patients home and had found that the equipment was not working properly. She did not know how to fix what was wrong, and left without calling for assistance. When Ms. Booth had found out what had happened the next week, CP told her that a "big to-do" was made out of the situation, and that she (CP) refused to see any more IV patients in the future. Ms. Booth regarded this statement as insubordination. No one else had ever done anything similar. CP had also missed a mandatory training which would have given her the expertise in repairing the equipment problem.

Response to Charge and Request for Information
Theresa F. Thompson, 35C940115

1 On or about December, 1991, Ms. Thompson submitted an internal application requesting she be considered for weekend duty, and was accepted. The position was regarded as full-time and was fully benefited. It stipulated that she be available to work every Friday at 12 Noon through the following Monday at 12 noon. Skills required of this position included proficiency in IV teaching and administration, excellence in assessment skills, and organizational skills to adequately coordinate delivery of care on the weekends. Eventually, due to lack of need, Ms. Thompson only worked Saturday and Sunday. This was the shift she was working at the time of her termination in March, 1993.

2 Proficiency in intravenous administration (IV) and teaching is required of all weekend staff members. Our policy is that all IV team members must pass a yearly examination on IV therapy. The IV Certification Pass-Off includes a written test, central line care, blood draw from central line, types of IV lines, mock IV and use of various IV equipment, such as Bard Infusion Pump, and TPN infusion. Ms. Thompson participated in and passed the examination on May 15, 1991 and May 6, 1992.

3 Additional educational inservices were routinely provided on site for professional development of Ms. Thompson and all other nurses required to perform IV therapy, usually on a monthly basis. Some of the inservices which were made available included:

Chemotherapy	3-4-92
Infusion of Pain Medications	3-6-92
TPN Update	10-2-92
Epidural Catheters	10-7-92

4 Ms. Thompson attended the first two inservices, but opted not to attend the last two. In fact, one of the incidents for which Ms. Thompson was discharged involved improper programming of a pump infusing TPN to a patient, an inservice which she did not attend.

5 Ms. Thompson had a history of staff and patient complaints for which she was counseled. Written counseling occurred on 5-3-91, in which a patient requested that Ms. Thompson be taken off the case, and 1-29-92 for a patient complaint that she caused a "stressful" visit due to the way she set up a glucometer machine. Performance reviews on 4-11-91 indicated Ms. Thompson needed to "increase knowledge of home health necessary in personal practice"; 8-20-92 indicated she needed to "increase assessment skills and admit paperwork".

6 Verbal complaints from staff to Ms. Thompson's supervisors included concern about her assessment skills and also regarding her appearance, which was often dirty and unkempt. One of her supervisors, Susan Morgan, has record of verbal counseling for

Page 5

Response to Charge and Request for Information
Theresa F. Thompson, 35C940115

patient complaints, interactions with peers and personal appearance issues on 5-3-91, 10-23-91, 12-1-91, 1-1-92, 1-30-92 and 4-18-92.

DISCHARGE:

The decision to terminate Ms. Thompson's employment was reached after careful review of the following:

Prior work experience

Current job description

CNS & H training specifically regarding IVs and TPN

CNS & H counseling history concerning staff and patient complaints

Incident reports completed regarding two patients on 3-13-93 and 3-14-93

The level of skill and judgment exercised on 3-13-93 and 3-14-93 was not appropriate and could have resulted in serious consequences for those patients.

The first incident on 3-13-93 involved a blood draw from a man who had an IV. Ms. Thompson drew the blood from an IV line which was infusing the drug Heparin. The fact that Ms. Thompson would draw blood from an IV line was extremely unusual in the first place. An excerpt from the CNS & H IV Certification Outline which Ms. Thompson read and passed specifically states, "Blood draws from an IV line are not recommended...PT and PTT's should not be drawn from a line". Because traces of the drug were still in the line, the blood sample readings turned out to be very strange. The concerned physician ordered this home bound patient to go to the emergency room for a blood draw, where the blood tests proved to be normal. While not life-threatening, this event caused considerable inconvenience for the patient. Additionally, the patient's physician was so angry over the error that he assigned the patient to another home health agency. To this day, he refuses to refer his patients to CNS & H.

The second, and most serious incident involved a woman who had several health problems, including pancreatitis. One of the treatments for her condition involved giving her Total Parental Nutrition (TPN) intravenously through a pancreatic pump. No other nutrients are given. It is important to understand that if the pump was not programmed correctly, the infusion of nutrients could stop abruptly causing her blood sugar to drop dramatically, leaving her vulnerable to a hypoglycemic incident. The patient could have slipped into a coma and died.

Ms. Thompson had seen the patient on 3-13-93, and had noted on the chart that the patient's blood sugar was low and unstable. The following day, 3-14-93, Ms. Thompson noted on the patient's chart



VISITING NURSE SERVICE

Professionals Caring for People at Home

HOSPICE of SALT LAKE

EMPLOYEE COUNSELING REPORT

EMPLOYEE: Terri Thompson DATE: 5-3-91
CLASSIFICATION PTN

REASON FOR CONFERENCE

TYPE OF COMMUNICATION

☐ Commendation ☐ Telephone
☐ Work Performance ☒ Office Conference
☐ Infraction of Policy ☐ Field Conference
☒ Other (Specify): client c/o - ex John Russell

Events leading to conference session: client called c/o straight
and to 1/11.

Handled: Met to Terri - and presented c/o the situation
on results with her interpretation of events
then discussed situation and possible ways
handling it

Commendation to employee: That if she feels better she should
not to encourage her request need and if need over
not try to intervene any further else to
peak to coordinator about her situation in another
Employee comments: None

Employee comment: Employee felt that it
is a personality problem, but that if she felt
the situation is another client she would handle
it and report to supervisor

Signature of employee: Terri Thompson Date: 5/3/91

Signature of counselor: Tom Olson Date: 5-3-91



By J. Thompson RN

HOSPICE

Casemanager Progress Note/Information Form

2

RE: Lee Ann Drechsel

FID # _____

PROGRESS NOTE (continued)

Client did BS on talking glucometer observed by nurse. BS was repeated on Client's machine - over 100 pt. Different from talking machine repeated on nurse's machine - within 15 pt. of talking machine. Client said, "Your machine is the first to come that close to talking machine. Everyone else is not same as mine." Nurse started to make suggestions about talking machine. Client said, "The nurse (gave her name) who brought the machine worked to me - an hour on the machine. Do you think you can come up with something I didn't think of?" Nurse answered, "I don't know. I thought I might see something that wasn't noticed." Client replied, "We covered everything." Nurse responded, "Okay, How much insulin do you need?" Insulin was given, HS insulin profiled. BP down done. BP + Client stated I had some doritos at lunch time." Nurse left.

Client had already done BS of Talking glucometer prior to nurse's arrival. 5 repeated of Client's machine - 157. Nurse said, "Do you mind doing it again on my machine?" Client said, "OK". Nurse calibrated her machine and reset code for new strips. Client said, "No one has ever taken so long just ready to do my BS." Nurse said, "They probably calibrate their machines at home before starting their visits. I like to do it at first client's house." BS was 97 - within 15 pt of talking glucometer. Client said, "Your machine is the only one that has come close to the new machine." Nurse said, "Would you mind doing your BS on the new SIGNATURE glucometer again?" Client said, "You think I don't know how to use the new machine." Nurse said, "I think you do know how to use it but your finger might still have been wet with alcohol." It looks like your finger is still wet when you stick it."

189

PHONE/PERSONAL CASE CONFERENCE WITH THE PRIMARY CARE NURSE WAS COMPLETED: DATE _____

Client said, "My finger is not wet." + ABNORMAL - NORMAL

Nurse asked to calibrate client's machine it result was 15 (should be 85-100). Followed client's instruction - result 17. Client BP - 180/100. Nurse told client that if nurse's

10-23-91

~~Steven,~~

I'm just not comfortable
in seeing many patients
if the charting is any
reflection of the case.

This is typical - never any
S. ~~from a nurse~~

I thought you should
know

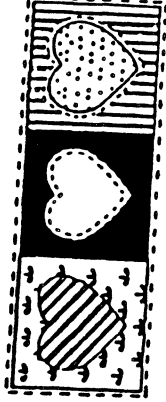
Thanks!

~~Donna~~

Donna

Gene seen this client
in PM because client had
no insulin in AM. She
was instructed to prefer
insulin syringes only -
She used this syringe because
it was the only syringe available
to her. This was 2nd visit
of the day. Does that matter

12-1-91



Susan - FYI

re: Juri Thompson
Saw a pt. Fri PM
for cath A 2^o to
leaking / burning.
Charting - assessed
much better.

Not your form &
ranked to CH.
(over)

11th Bldg 1-1-92

COMMUNITY NURSING SERVICE
INCIDENT REPORT

EMPLOYEE INVOLVED:

PATIENT INVOLVED:

Name: Terry Thomas

Name: Mr. Case

Address: _____

Address: 1916 Fortwell St.

Phone: _____

Phone: 487-8148

Employee: RN
(RN, PT, Aide, etc.)

FID#: 18236

OTHERS INVOLVED: Name: _____ Phone: _____
Address: _____ Relationship: _____

DATE OF INCIDENT: 1/1/92 TIME OF INCIDENT: 1230
LOCATION OF INCIDENT: 1916 Fortwell St.
INCIDENT REPORTED TO: Susan Thompson RN TIME: 1330 DATE: 1/2/92

DESCRIPTION OF INCIDENT: (Complete other side of form if industrial injury) Client received .25 gm Vancomycin IV instead of 1.25 gm on Jan 1st 1992. Dr. Calanne notified. Received order to A P+T to sum Jan 5, 1992. Terry Thomas received order from Nancy B. that dose was .25 or 1/4 gm. Night nurse report. she dose did 1.25 gm. Night supervisor called. felt she could not do anything about it because she did not have Schedule (Schippers) RN Employee signature

FOLLOW-UP

Family aware of incident: Yes

Physician aware of incident: Yes

Action taken/Industrial report: -

Follow-up/Supervisor's Comments: - Night nurse will call only
Do not order to Supervisor only. - Supervisor responsible to
and Coordinator - use via supervisor will be
instructed not to accept or give any orders.
A's -

NS-363
/89

PRN nurse advised not to accept any order A's from
anyone other than an RN:-

CNS

COMMUNICATION/COMPLAINT FORM

Date 1/30/92

Information Given By: Harmon West Patient X
Name McLaughlin Staff _____
Other _____

Information Received By: Susan Meyer
Name _____
Team manager
Job Title _____

Nature of Communication:

Vague complaints about questions how to
do dsq 4.

Timing was poor Question whether or
not could of been avoided if apt had
been set up

Action Taken/Followup:

for counseling form attached

Susan Meyer
Name of Person Completing Followup

1/29/92
Date

title: TV Team Manager

CNS

COMMUNICATION/COMPLAINT FORM

Date 4-18-92

Information Given By: Shenue Teedale
Name

Patient ☒
Staff ☐
Other ☐

Information Received By: Susan Morgan
Name

Dr. Susan Morgan
Job Title

Nature of Communication:

Spoke to Shenue about problem, & IV
(incident report). Shenue was very upset to nurse
Terry Thompson, and had left the room. Said
nurse jumped on her case and told her she
had done every thing wrong - Shenue said she
had done what Karen had told her to do.
Wants to see TIO for IV confusion over
weekend but does not want Terry. Towards
end of conversation I agreed that Terry
could see at 1300 as scheduled. And I will
just leave the room!!
I feel that caretaker was stressed and
on edge, and was suffering from lack of sleep

Action Taken/Followup:

Signature of Person Completing Followup

Date

File: _____

Toni -

12-1-91

Toni - on problems &
relationships -
wants to send inf
writing
effect -

Worked ^{Toni} client to see counselor about
ongoing problems & client needs.
Possibly need communication counselor

Also talk about interaction & other nurses
personal approach improvement

Toni angry at first, but change
was noted as Toni went by.

set hour asked -
Told me she seen counselor. 1-25-92

Also Mr. O'Brien, being a lawyer, would have recognized the Tort of Outrage for what it was inspite of the fact that it was not properly named by Plaintiff. He refused to quote it, and always insisted it tried to create a defamation liability. (page 38, 88, 120, 136) Plaintiff contends that this effort to mislead the Court is a violation of Rules of Professional Conduct 3.3 (a 1, 4)

Mr. O'Brien's first attempt to subvert the Plaintiff's charges and mislead the judge in violation of Professional Conduct Rule 3.3 (a 1, 4) and Section 78-51-26(4) (Duties of Attorneys and Counselors) was in Motion to Dismiss/and or for Summary Judgment (page 37), quote: The basis for this Motion is that Plaintiff seeks to assert a defamation claim for statements made..." He further subverted the claim in the Memorandum--quote: "Plaintiff's pro se Complaint (undated and Amended Complaint (dated 10/19/94) expressly assert that Plaintiff was defamed by statements allegedly made by CNS/H..." (page 38)

The Amended Complaint added to the Pro Se Complaint a charge that Plaintiff had been defamed by Defendant. However, the Plaintiff's pro se Complaint did not assert that Plaintiff had been defamed by statements made by Defendant but did expressly charge severe emotional and physical harm caused by false testimony (a violation of Utah Code Ann.Sec. 76-8-502, 76-8-503, and 76-8-504) (page 38)

Defendant's lawyer continues the deception on page 2 of Memorandum--quote: "Plaintiff plainly seeks to impose defamation liability..." (page 39) and he clearly ignores the charge of severe emotional and physical harm.

Plaintiff at this time was still under the impression that the lawyer also meant false testimony by 'defamation'.

Mr. O'Brien, in using absolute privilege as a defense, deliberately eliminated that portion of the definition of absolute privilege (Black's

Law Dictionary) that says --quote: "(absolute) privilege...protects the speaker or publisher without reference to his motives or the truth or falsity of statement. This may be claimed in respect to statements made in legislative debates, in reports of military officers to their superiors in the line of duty, and statements made by judges, witnesses, and jurors in trials in court. (It does not cover the litigants.)...based on the fact that the statement was made in the performance of a political, judicial, social or personal duty...privileges created by law irrespective of consent...arise where there is some important and overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm." By not revealing this information to the Court, Defendant's lawyer was in violation of Rules of Professional Conduct Rule 3.3 (a 2). There was no overriding social value in the false testimony presented by Defendant nor was the false testimony given as a matter of duty. It was totally self-serving and meant to manipulate a federal commission in the line of its duty. The statement did not promote public welfare in any way. If CNS/H goes out of business, there are other home nursing agencies to fill the void.

By definition absolute privilege protects statements made in judicial or quasi-judicial proceedings in the line of duty and have an overriding social value from libel liability. However, Mr. O'Brien deceitfully led Court to believe absolute privilege also protected from harm caused by the false testimony and criminal charges. (page 135-136)

Mr. O'Brien further attempted to mislead the Court about the main issue of the EEOC investigation. The lawyer claimed that the main issue was Plaintiff's termination of employment (page 42) which it was not. The main issue was a two-year history of harrassment and retaliation. (pages 67-73).

When Mr. O'Brien finally accepted the fact that there was indeed a tort of outrage, he insisted that it was created around the end of December, (page 136)

when in fact it was the Original Complaint (page 2). His defense again attempted to deceive the Court into believing that the Tort was really only an attempt "to impose liability for absolutely privileged statements." (page 136) and that the stress was created by termination of employment which is not considered outrageous. (page 137). In the Pro Se Complaint it clearly states that the stress that hospitalized the Plaintiff was caused by false testimony which Plaintiff learned about nearly a year and a half after termination of employment. Deliberately presenting false testimony to a federal commission in the performance of its duty to manipulate a decision is outrageous conduct.

Mr. O'Brien consistently and persistently used arguments that were aimed at deceiving and misleading the judge. He consistently used partial definitions, compared judicial proceeding to the EEOC proceeding (there is no comparison. Plaintiff filed the charge with EEOC but was not required to send a copy to the Defendant. Plaintiff did not hear from the EEOC again for eight months when the investigator was ready to make a decision. Plaintiff was unable to get a copy of Defendant's response until and for the exclusive use of a Civil suit. There are no procedural rules or mechanism in place to insure a fair and just determination.

Plaintiff respectfully asks this Court to find Mr. O'Brien guilty of professional misconduct, guilty of violation of Utah Code Ann. Section 78-51-31- Plaintiff holds Mr. O'Brien and his employers (JONES, WALDO, HOLBROOK & MCDONOUGH) equally responsible for my month of severe physical and mental harm and ask \$36,000,000 (thirty-six million dollars) in relief.

4. Argument in support of misconduct of Judge Frederick.

Code of Judicial Conduct. Canon 2 A. A judge shall respect and comply with the law and should exhibit conduct that promotes public confidence in

in the integrity and impartiality of judiciary.

Canon 3.B (4) A judge shall be patient, dignified and courteous to litigants...

Canon 3. B (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice...A judge should be alert to behavior that may be perceived as prejudicial.

Canon 3. B (7) A judge shall accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law.

Canon 3. B (8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Attached are two affidavits attesting to violation by Judge Frederick of the above mentioned Canons.

Plaintiff further charges that Judge J. Dennis Frederick violated Canon 3 B (5) when he issued a minute order granting Defendant's request to deny Plaintiff's Post-judgment orders. The request was two days late. Judge Frederick granted the request before Plaintiff even had a copy of it. He also signed the order before Plaintiff had filed her reply. Defendant's Request was filed January 11, 1995; Minute Entry was made the 12th; Order was signed the 13th. Plaintiff Objected to judge's hasty decision on 13th. Judge set aside the minute entry of the 12th--stated he misunderstood Defendant's argument. On January 26, 1995 he found in Defendant's favor based on Defendant's arguments. Between January 11, 1995 (Defendant's arguments misunderstood by judge) and January 26, 1995 there were no new arguments presented by Defendant. The judge's decision on January 26, 1995 were based on the same arguments that he claimed to have misunderstood on January 18, 1995! (page 134, 141, 143, 148, 149, 150, 154).

Plaintiff charges that Judge Frederick never read any of Plaintiff's

charges or arguments and his attitude towards Plaintiff was a violation of Canons 2 and 3 of the Code of Judicial Administration.

Plaintiff respectfully requests that the Supreme Court investigate this matter and take appropriate action.

10. Relief sought: An equitable decision about the EEOC that will prevent future situations like the one Plaintiff found herself in, and \$12,000,000 from the Defendant for the severe harm they caused to Plaintiff by their flagrant violation of the law. Plaintiff also asks \$36,000,000 from JONES, WALDO, HOLBROOK AND McDONOUGH Law Firm for their involvement in the harm caused to Plaintiff. Plaintiff also asks that a decision or clarification be made giving precedence to Constitutional law and statutory law over common law when there is a conflict between the two. Plaintiff further asks \$2,000,000 for the harm caused to Plaintiff's reputation by the Defendant's false testimony. Plaintiff requests all legal fees and damages paid by Defendant.

DATE

7/9/95

Theresa F. Thompson

Appellant

I hereby certify that 2 accurate and complete copies of this brief were delivered to: Michael Patrick O'Brien
Attorney at law
170 South Main Street #1500
Salt Lake City, Utah 84101

DATE

7/10/95

Theresa F. Thompson

Appellant

PLAINTIFF REPRESENTING SELF
BOX 786
PARK VALLEY, UTAH 84329
NO PHONE

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

Theresa F. Thompson,)	
)	
Plaintiff,	)	AFFIDAVIT AFFIRMING OPENING STATEMENT
	)	BY DEFENDANT'S LAWYER AND GENERAL AT-
vs.	)	TITUDE OF COURT
)	
COMMUNITY NURSING SERVICE/HOSPICE,	)	TO BE FILED WITH CIVIL CASE
)	
Defendant.	)	Civil No. 940906495 CV
	)	Appellate No. 950102

I, William M. Thompson, being over 21 years of age and of sound mind and body, do solemnly affirm that the following statement is a true and accurate account of what transpired at the court hearing on December 12, 1994 between Theresa F. Thompson (my mother) and Community Nursing Service/Hospice:

I was sitting towards the back of the courtroom. Mr. O'Brien (defendant's lawyer), as he approached the podium, said that they did not contest the charge's but could not be held accountable for them and gave his argument. I do not remember his exact words. I have read the transcript of Mr. O'Brien's statement and it does not agree with what I heard. Since I was farther from Mr. O'Brien than either the judge or the recorder, it is assumed that they also heard what I heard.

During the entire time Mrs. Thompson was talking, Judge Frederick sat tapping a pen or pencil on his table, flipping papers and occasionally writing. He seldom looked in Mrs. Thompson direction and I got the impression he was totally bored by the whole proceeding, also that he had made up his mind about the case before the hearing had ever started.

After the hearing I told Mrs. Thompson that from what I had observed not

to be surprised if Mr. O'Brien's opening statement did not appear in the transcript of if Judge Frederick found against her. I also told her that if she wanted or needed, I would testify in court as to what I had seen and heard. She didn't think that would be necessary. She really believed that because Mr. O'Brien had said what he did, that it would appear in the transcript. She also believed that if she lost the case, it would be because she had presented her case badly, not because of bias on the part of the judge.

I was there as a witness to whatever transpired, but also to try and prevent whatever might transpire from causing my mother so much stress that she wound up in the hospital again. My mother finally realized that this testimony was necessary when she tried to have the transcript corrected and the judge refused to have it corrected even when Mr. O'Brien did not deny saying it. His only argument was that Mrs. Thompson misunderstood him. I did not misunderstand him, and neither did Mrs. Thompson.

MAR 30 95
Date

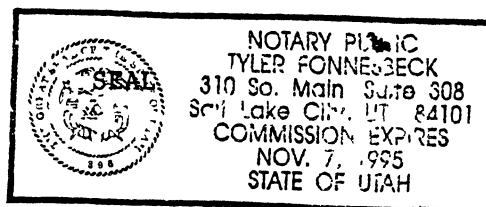
William M Thompson
Affiant

State of Utah
County of ~~Weber~~ Box Elder

Subscribed and sworn to before me on 3-30-95
date

T. H. Farnsworth
signature

Name and Title of
Officer Authorized to
Administer Oath



PLAINTIFF REPRESENTING SELF
BOX 786
PARK VALLEY, UTAH 84329
NO PHONE

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

THERESA F. THOMPSON,)	
)	
Plaintiff,	)	AFFIDAVIT AFFIRMING OPENING STATEMENT
	)	OF DEFENDANT'S LAWYER AND GENERAL AT-
vs.	)	TITUDE OF COURT
)	
COMMUNITY NURSING SERVICE/HOSPICE,	)	TO BE FILED WITH CIVIL CASE
)	
Defendant.	)	Civil No. 940906495 CV
	)	Appellate No. 950102
)	

I, Theresa F. Thompson, being over 21 years of age and of sound mind and body, do solemnly affirm that the following statement is a true and accurate account of what transpired at the court hearing on December 12, 1994 between Theresa F. Thompson and Community Nursing Service/Hospice:

I was sitting alone at the Plaintiff's table. Mr. O'Brien, Defendant's lawyer, arose from his seat and approached the podium. As he walked to the podium, he quietly said, "We do not contest the charges. We admit them." He placed his papers on the podium and proceeded to read from them his argument as to why CNS/H should not be held accountable for its actions.

After Mr. O'Brien completed his argument and sat down, I went to the podium to give my argument as to why CNS/H should be held accountable for their actions. I looked at the judge and he was sorting through some papers that were on his desk. I thought it was my responsibility to get his attention. I started to talk but was already confused and reeling under the Defendant's admission of guilt. I looked up at the judge again and he was tapping a pen on his desk, but he was looking towards me. I continued talking, but getting more and more flustered. He looked away and I knew I had lost his attention.

Throughout the balance of my argument the judge seemed to be occupied with his papers and pen. I sensed impatience from him and felt it was because of my poor presentation which got worse by the minute as I became more and more frustrated. Finally at the end of the hearing after the Defendant had made their final statement, I asked the judge if I could present some other evidence that had not been brought out in any previous written statement. (I didn't know what could or couldn't be used as evidence.) The judge asked, "Is it going to take long?" I said no, and hurried through the presentation.

I did not know until after I filed the appeal with the Supreme Court and continued my research in the Utah Codes that the judge's attitude towards me was a violation of the Code of Judicial Administration (Canons 1 and 3).

March 30, 1995
date

Theresa F Thompson
Affiant

State of Utah
County of ~~Weber~~ Box Elder

Subscribed and sworn to before me on 3-30-95
date

[Signature]
signature

Name and Title of
Officer Authorized to
Administer Oath

